

**Date:** October 5, 2020

**Docket:** AMS-NOP-17-0065

**Re: Strengthening Organic Enforcement Proposed Rule – Oversight of Certification Activities**

Thank you for this opportunity to provide comment on the United States Department of Agriculture (USDA) Agricultural Marketing Service (AMS) National Organic Program (NOP) Proposed Rule on Strengthening Organic Enforcement. The Organic Trade Association is submitting individual comments on each topic in the proposed rule to help NOP in its process of finding and navigating our positions and recommendations. We have also submitted all of our comments bundled into a single PDF including a cover letter.

This comment addresses Section #9: Oversight of Certification Activities.

**Summary of the Organic Trade Association’s (OTA) Positions and Recommendations**

- OTA supports the new term and definition of ‘certification activity.’
- OTA supports the new term and definition of ‘certification office,’ with clarification around the use of a home office.
- OTA supports the proposed requirement that NOP be notified of the opening of new certification offices.
- OTA recommends a notification timeframe of 45 days after certification activities begin.
- OTA does not support the revision to strike “accreditation” from the first part of § 205.640.
- OTA supports the proposal that all requirements in this section be implemented within one year after the publication of the final rule.

**OTA’s Positions and Recommendations**

- **OTA supports the new term and definition of ‘certification activity.’** This new term will help clarify USDA’s oversight of the certifying agents it accredits by defining the general activities which are considered essential to the function of a certifying agent, and therefore subject to NOP oversight. We also strongly support the clarification that NOP oversight extends to the activities of any person performing work on behalf of the certifying agent, such as a subcontractor or a specific office operating in specific countries.

- **OTA supports the new term and the definition of ‘certification office,’ with clarification around the use of a home office.** The new term and definition are essential to effective NOP oversight of certification activities that occur at all certification offices and locations. It is not clear, however, if the reference to “...any site...” would include a home office. OTA views a home office where an employee works to be a remote workstation rather than a certification office.
  - ➔ **Recommendation:** OTA recommends clarification on whether a home office should be considered a ‘certification office.’ This could be provided either through a revision to the proposed definition or through Guidance.  
*See OTA’s requested revision in Table 8*
- **OTA supports the proposed requirement that NOP be notified of the opening of new certification offices. However, we do not support the proposed notification timeframe of 90 days after certification activities begin.** This amount of time is excessive and significant certification activity could occur during that amount of time.
  - ➔ **Recommendation:** OTA recommends that certifying agents notify NOP within 45 calendar days.  
*See OTA’s requested revision in Table 8*
- **OTA does not support the revision to strike “accreditation” from the first part of § 205.640.** There is no explanation for the change, and it is not being framed as a technical correction. It is unclear what the intent of the change is, and if it will have a substantive impact. OTA does not support a revision to the regulation that does not come with an explanation.

**Table 8: OTA’s Requested Revisions to the Proposed Rule and Recommendations for Guidance**

Action & Section	Proposed Rule Text	Revisions and/or Guidance needed to implement OTA’s Positions and improve the quality, clarity and utility of the Proposed Rule.
Add new term 205.2	<b>Certification activity.</b> Any business conducted by a certifying agent, or by a person acting on behalf of a certifying agent, including but not limited to: certification management; administration; application review; inspection planning; inspections; sampling; inspection report review; material review; label review; records retention; compliance review; investigating complaints and taking adverse actions; certification decisions; and issuing transaction certificates.	<b>OTA supports</b> this new term and definition.
Add new term 205.2	<b>Certification office.</b> Any site or facility where certification activities are conducted, except for certification activities that occur at certified operations or applicants for certification, such as inspections and sampling.	<b>Revision or Guidance needed:</b> OTA supports this new term and definition. However, either a revision to the regulation or guidance is needed to clarify whether a certification office would apply to a “home office.”  OTA recommends that clarification be provided in Guidance. Alternatively, the rule could be revised as shown below.
<b>OTA Requested Revision (if not clarified in Guidance):</b> <i>Certification office.</i> Any site or facility where certification activities are conducted, except for <b>home offices and</b> certification activities that occur at certified operations or applicants for certification, such as inspections and sampling.		
Add 205.501(a) (22)	Notify AMS not later than 90 calendar days after certification activities begin in a new certification office. The notification must include the countries where the certification activities are being provided, the nature of the certification activities, and the qualifications of the personnel providing the certification activities.	<b>Revision needed:</b> OTA does not support the proposed timeframe of 90 days after certification activities begin. This amount of time is excessive. Instead, we recommend 45 days.
<b>OTA Requested Revision:</b> Notify AMS not later than <del>90</del> <b>45</b> calendar days after certification activities begin in a new certification office. The notification must include the countries where the certification activities are being provided, the nature of the certification activities, and the qualifications of the personnel providing the certification activities.		

<p>Revise introductory paragraph 205.640</p>	<p>Fees and other charges equal as nearly as may be to the cost of the <del>accreditation</del> services rendered under the regulations, including initial accreditation, review of annual reports, and renewal of accreditation, shall be reviewed, assessed, and collected from applicants <del>for initial accreditation and accredited certifying agents submitting annual reports or seeking renewal of accreditation</del> in accordance with the following provisions:</p>	<p><b>Do NOT revise:</b> OTA does not support the revision to strike “accreditation” from the first part of 205.640. There is no explanation for its change, and it is not being framed as a technical correction so it’s unclear if it will have a substantive impact. It appears to connect fees and other charges generally to “services,” rather than to specifically “accreditation services,” as is intended by the regulation and the National Organic Program.</p> <p>The language omitted in the second part of the provision appears to be duplicative. Again, however, the change is not explained therefore OTA does not support a revision.</p>
<p><b>OTA Requested Revision: DO NOT REVISE THE REGULATION - retain the regulatory text as is:</b> Fees and other charges equal as nearly as may be to the cost of the accreditation services rendered under the regulations, including initial accreditation, review of annual reports, and renewal of accreditation, shall be assessed, and collected from applicants for initial accreditation and accredited certifying agents submitting annual reports or seeking renewal of accreditation in accordance with the following provisions:</p>		
<p>Revise 205.665(a)</p>	<p>Notification. <u>(1) A written notification of noncompliance shall will be sent to the certifying agent when:</u>          An inspection, review, or investigation of an accredited certifying agent by the Program Manager reveals any noncompliance with the Act or regulations in this part;  <u>or</u>  <u>The Program Manager determines that the certification activities of the certifying agent, or any person performing certification activities on behalf of the certifying agent, are not compliant with the Act or the regulations in this part;</u>  <u>or</u>  <u>The Program Manager determines that the certification activities at a certification office, and/in specific countries, are not compliant with the Act or the regulations in this part.</u>  <u>Such notification must shall provide:</u>          A description of each noncompliance;</p>	<p>No concerns.</p>

	<p>The facts upon which the notification of noncompliance is based; and The date by which the certifying agent must rebut or correct each noncompliance and submit supporting documentation of each correction when correction is possible.</p>	
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On behalf of our members across the supply chain and the country, the Organic Trade Association thanks the National Organic Program for your commitment to protecting organic integrity.

Respectfully submitted,



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